

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

SATHEESH KANNAN MARIMUTHU,
et al.

Plaintiffs,

vs.

NO. 1:13-CV-499-MAC

SIGNAL INTERNATIONAL LLC, et al.

Defendants.

REPORT AND RECOMMENDATION DISMISSING PLAINTIFF TALABATHULLA

This case is assigned to the Honorable Marcia A. Crone, United States District Judge, and is referred to the undersigned United States Magistrate Judge. Doc. No. 4. Plaintiffs' counsel has recently informed the court that they have been unable to contact Plaintiff Venkata Satya Sivagi Rao Talabathulla since November of 2013, despite considerable efforts. *See* Doc. No. 149-2. Because of the inability to contact Mr. Talabathulla, Plaintiffs' counsel has filed an unopposed "Motion to Withdraw as Counsel for Plaintiff Venkata Satya Sivagi Rao Talabathulla." Doc. No. 149. On July 17, 2018, the court entered an order requiring Mr. Talabathulla to notify the court within thirty days whether or not he consents to the motion to withdraw. Doc. No. 150. Mr. Talabathulla was warned that failure to inform the court within thirty days will result in dismissal of his claims without prejudice for failure to prosecute and comply with a court order, pursuant to FED. R. CIV. P. 41(b). *Id.* Plaintiffs' counsel was directed to serve the order on Mr. Talabathulla at his last known email and mailing addresses (*id.* at 2), and they did so on July 17, 2018. *See* Doc. No. 151. Because Mr. Talabathulla has not responded to the court's order, his claims should be dismissed without prejudice, pursuant to FED. R. CIV. P. 41(b), for failure to prosecute and comply with a court order.

I. Legal Standard

Federal Rule of Civil Procedure 41(b) authorizes a district court to dismiss an action for failure to prosecute or for failure to comply with a court order. *Boudwin v. Graystone Ins. Co.*, 756 F.2d 399, 401 (5th Cir. 1985). “This authority flows from the court’s inherent power to control its docket and prevent undue delays in the disposition of pending cases.” *Id.* (citing *Link v. Wabash, R.R. Co.*, 370 U.S. 626, 629 (1962)). The exercise of this power is committed to the sound discretion of the court. *Forney Engineering Co.*, 589 F.2d 243, 248 (5th Cir. 1979).

II. Analysis

By failing to communicate with his counsel since November 2013 (*see* Doc. No. 14-2), Mr. Talabathulla has failed to prosecute his case. By failing to respond to the court’s order (Doc. No. 150) requiring Mr. Talabathulla to notify the court of his position on the motion to withdraw, he has failed to comply with a court order. Mr. Talabathulla was warned that his claims would be dismissed without prejudice if he did not notify the court within thirty days.

III. Recommendation

The undersigned recommends that Mr. Talabathulla’s claims be dismissed without prejudice for failure to prosecute and failure to comply with a court order, pursuant to FED. R. CIV. P. 41(b).

IV. Order

It is **ORDERED** that Plaintiffs’ counsel shall mail this Report to Mr. Talabathulla at his last known address and email it to his last known email address within seven (7) days of this order. Plaintiffs’ counsel shall file a notice with the court when they have completed this task.

V. Objections

Pursuant to 28 U.S.C. § 636(b)(1)(C) (Supp. IV 2011), each party to this action has the right to file objections to this Report and Recommendation. Objections to this Report must (1) be in writing, (2) specifically identify those findings or recommendations to which the party objects, (3) be served and filed within fourteen (14) days after being served with a copy of this Report; and (4) be no more than eight pages in length. *See* 28 U.S.C. § 636(b)(1)(C); FED. R. CIV. P. 72(b)(2); E.D. Tex. Civ. R. CV-72(c). A party who objects to this Report is entitled to a de novo determination by the United States District Judge of those proposed findings and recommendations to which a specific objection is timely made. *See* 28 U.S.C. § 636(b)(1)(C); FED. R. CIV. P. 72(b)(3).

A party's failure to file specific, written objections to the proposed findings of fact and conclusions of law contained in this Report, within fourteen (14) days of being served with a copy of this Report, bars that party from: (1) entitlement to de novo review by the United States District Judge of the findings of fact and conclusions of law, *see Rodriguez v. Bowen*, 857 F.2d 275, 276–77 (5th Cir. 1988), and (2) appellate review, except on grounds of plain error, of any such findings of fact and conclusions of law accepted by the United States District Judge. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428–29 (5th Cir. 1996).

SIGNED this 24th day of August, 2018.



Zack Hawthorn
United States Magistrate Judge